

### **REMARKS**

The Office Action dated February 25, 2005 has been reviewed. Claim 9 was objected to because of an informality. Claim 9 has been amended to correct the informality.

Claims 1-9 were rejected. In view of the foregoing amended claims and the following arguments, it is respectfully submitted that the claims are in condition for allowance.

### **CLAIM REJECTIONS - 35 U.S.C. § 102(b)**

Claims 1 and 3-6 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 975,457 issued to Ransome. Contrary to the Examiner's position, it is respectfully submitted that Ransome does not teach or disclose a device for filling an open trench having a means in a frame for temporarily leveling the dirt moved into and over the trench as recited in Applicant's independent claim 1 and thus, each of the claims which depend therefrom.

Ransome discloses an apparatus for filling trenches. The main frame of the apparatus is provided with sidewalls. Rigid transverse division plates (16) are placed between the walls. The walls enter the trench so that the upper edges of the walls lie at the grade line. The division plates extend upward above the grade line to receive filling earth between them and are gradually

reduced in width from the front toward the rear of the apparatus. In the operation of the apparatus, earth is thrown by the blades (19) in between the division plates falling around tamping rollers. The rollers pack or tamp the earth.

Contrary to the Ransome reference, Applicant's inventive concept recited in claim 1 is of a device for filling an open trench that has a means in the frame for temporarily leveling the dirt that is moved into and over a trench. Ransome does not teach, disclose, or even suggest a means in the frame for temporarily leveling the dirt moved into and over the trench. The Examiner has suggested that the division plates (16) in Ransome act as the means in the frame for temporarily leveling the dirt moved into and over the trench. However, Ransome does not teach, disclose or even suggest the division plates acting to level the dirt moved into and out of the trench. In Ransome, the division plates do not act to temporarily level the dirt moved into and over the trench, as recited in Applicant's claim 1, but rather the division plates extend upward above the grade line and receive filling earth between them.

Thus, it is readily apparent that Applicant's inventive concept as recited in Applicant's independent claim 1, and thus, each of the claims which depend therefrom, are not anticipated by Ransome. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the before-mentioned rejections of 35 U.S.C. § 102(b) as applicable to the claims now pending in the present application.